

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1806 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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RAJKOT MUNICIPAL CORPORATION

Versus

KHENGARBHAI GOVINDBHAI DHODIA  
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Appearance:

MR AK CLERK for Petitioner

MR JR NANAVATI for Respondent No. 1  
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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 22/12/2000

ORAL JUDGEMENT

1. The petitioner is the original defendant, against whom the respondent has filed a suit, being Regular Civil Suit No.455 of 1991, which is pending in the Court of 6th Joint Civil Judge (Senior Division), Rajkot. In the aforesaid suit, the plaintiff has prayed for a permanent injunction for restraining the Rajkot Municipal Corporation from taking possession of Survey No.132/Paiki, which, according to the plaintiff, belongs to him. In the aforesaid suit, the Corporation has taken the stand that at the relevant time, the State Government

had sanctioned Town Planning Scheme No.8 and the concerned Town Planning Officer had paid compensation to the occupants or, in some cases, alternative lands were also given and, ultimately, lands were acquired by the Government and all the procedure was complied with by the State Government.

2. At this stage, we are not concerned with the pleadings of the parties in detail. However, after a considerable period, i.e. about 5 years after filing of the suit, on behalf of the plaintiff, an application was given for joining State Government and Town Planning Officer of the Rajkot City Scheme No.8 and Chief Town Planner as party-defendants in the suit.

3. On behalf of the Corporation, the said application was resisted on the ground that after a period of five years, the State Government cannot be allowed to be joined and the prayer against the State Government is also time barred. It was also stated that it was not necessary to join the State Government as a party respondent as the State Government is neither a necessary party nor proper party to the suit. It was also stated that even the suit itself is not maintainable in view of the provisions of the Town Planning Act, especially Section 5 thereof.

4. The learned Civil Judge, ultimately, by his order dated 12th August, 1996, allowed the said application and the plaintiff was permitted to amend the plaint and join the State Government, the Town Planning Officer as well as the Chief Town Planner as party-defendants.

5. The aforesaid order is impugned in the present Revision Application.

6. At the time of hearing of this Revision Application, Mr.A.K. Clerk, appearing for the Rajkot Municipal Corporation, states that the order in question is without jurisdiction, as, according to him, the aforesaid parties were neither proper parties nor necessary parties and, therefore, there was no question of joining them as party-defendants in the suit and since the order, therefore, is without jurisdiction, this Court, in Revision Application, should interfere with the said order by setting aside the same. However, looking to the controversy and especially looking to the fact that so far as the Local Body is concerned, it is only an implementing agency so far as the Town Planning Scheme is concerned and ultimately, it is the Scheme framed by the State Government which is required to be implemented and,

therefore it cannot be said that the State Government is foreign so far as the dispute involved in the suit is concerned, but, at the same time, it is also clear that while joining the party, the claim against such party should not be barred by limitation. I, therefore, keep the question about limitation open and the learned Judge, at the time of deciding the suit or while considering the question about any relief, will also consider whether the Suit against the State Government is within the limitation or not. The said question is to be decided at the trial by the learned Judge. It is needless to say that the trial court will also consider the question whether the present suit is maintainable in law or not.

7. Subject to the above observations, so far as the order of joining party is concerned, as stated earlier, it can be said that if not necessary parties, at least they are proper parties to the suit and, therefore, order of the learned trial Judge directing them to be joined as party-defendants is required to be confirmed and it is accordingly confirmed.

8. Mr.A.K. Clerk, appearing for the petitioner, submitted that the suit is of 1991 and today, it is still at the issue stage. When there is no interim relief granted in the Revision Application, it was the duty of the learned trial Judge to dispose of the said suit by this time. It is surprising that in a suit of 1991, even issues are not framed till today. The learned Civil Judge (Senior Division), Rajkot is, therefore, directed to immediately proceed with the aforesaid suit and to decide the suit latest by 30th April, 2001 without fail. The compliance report about such disposal to be sent to this Court and in no case, hearing of the suit should be deferred beyond the aforesaid date.

9. This C.R.A. is accordingly disposed of as per the observations made in the aforesaid order. Rule is discharged with no order as to costs.

22nd December, 2000 ( P.B. Majmudar, J. )

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(apj)